

Introduced by Senator Migden

February 18, 2005

An act to amend Section 11999.6 of the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of the Penal Code, relating to drug treatment.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as introduced, Migden. Drug treatment.

(1) Existing law, added by initiative statute, provides that a person convicted of a nonviolent drug possession offense shall receive probation with completion of a drug treatment program as a condition of probation. Existing law also provides that, except as specified, a person's parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating a drug-related condition of parole, but that an additional condition of parole for those offenses or violations shall be completion of a drug treatment program.

This bill would state that no person shall be denied the opportunity to benefit from the above provisions based solely on evidence of a co-occurring psychiatric disorder.

(2) Existing law defines "successful completion of treatment" for purposes of the provisions in (1) as a defendant who has had drug treatment imposed as a condition of probation who has completed the prescribed course of treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

This bill would delete from the definition the condition that there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

(3) Existing law provides that drug treatment services provided pursuant to the provisions in (1) for a defendant on probation or parole may not exceed 12 months, not including aftercare.

This bill would authorize a court to impose treatment beyond 12 months, for a period of treatment and aftercare to not exceed 24 months.

(4) Existing law authorizes a court to set aside the conviction of a defendant who has successfully completed drug treatment under the provisions in (1), and to dismiss the indictment, complaint or information against the defendant.

This bill would specify the conditions under which a defendant undergoing narcotics replacement treatment would be deemed to have successfully completed treatment.

(5) Under the provisions in (1), if a defendant violates probation for a 3rd time or parole for a 2nd time, a court is required to revoke his or her probation.

This bill would authorize a court to extend probation by intensifying or altering the defendant's drug treatment plan.

(6) Existing law creates a state fund to award counties money to implement the drug treatment requirements of the provisions in (1), but prohibits money in that fund from being used to pay for the cost of drug testing.

This bill would prohibit a county from spending more than 12% of its allocation for those provisions on costs or services other than drug treatment, training, counseling, or housing for defendants, as specified.

Because the bill would change probation related duties relative to these defendants, the bill would change the penalty for crimes, and thus would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Because the bill would amend an initiative statute, it would require a 2/3 vote for enactment by the Legislature.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 11999.6 of the Health and Safety Code is amended to read:

~~11999.6. Distribution of Monies from Substance Abuse Treatment Trust Fund~~

~~Monies~~ *Moneys* deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing (a) drug treatment programs under this act, and ~~(b)~~ vocational training, family counseling and literacy training under this act. *A county may not spend more than 12 percent of the amount allocated to it on costs or services other than drug treatment, vocational training, literacy and education, family counseling, or housing in sober living homes or other residences that are likely to support recovery from addiction.* Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this act other than drug testing services of any kind. ~~Such monies~~ *Those moneys* shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

SEC. 2. Section 1210 of the Penal Code is amended to read:

1210. ~~Definitions~~

1 ~~As~~As used in Sections 1210.1 and 3063.1 of this code, and
2 Division 10.8 (commencing with Section 11999.4) of the Health
3 and Safety Code:

4 (a) The term “nonviolent drug possession offense” means the
5 unlawful personal use, possession for personal use, or
6 transportation for personal use of any controlled substance
7 identified in Section 11054, 11055, 11056, 11057 or 11058 of the
8 Health and Safety Code, or the offense of being under the
9 influence of a controlled substance in violation of Section 11550
10 of the Health and Safety Code. The term “nonviolent drug
11 possession offense” does not include the possession for sale,
12 production, or manufacturing of any controlled substance and
13 does not include violations of Section 4573.6 or 4573.8.

14 (b) The term “drug treatment program” or “drug treatment”
15 means a state licensed and/or certified community drug treatment
16 program, which may include one or more of the following:
17 outpatient treatment, half-way house treatment, narcotic
18 replacement therapy, drug education or prevention courses and/or
19 limited inpatient or residential drug treatment as needed to
20 address special detoxification or relapse situations or severe
21 dependence. The term “drug treatment program” or “drug
22 treatment” includes a drug treatment program operated under the
23 direction of the Veterans Health Administration of the
24 Department of Veterans Affairs or a program specified in Section
25 8001; such a program shall be eligible to provide drug treatment
26 services without regard to the licensing or certification provisions
27 required by this subdivision. The term “drug treatment program”
28 or “drug treatment” does not include drug treatment programs
29 offered in a prison or jail facility.

30 ~~(c)~~© The term “successful completion of treatment” means
31 that a defendant who has had drug treatment imposed as a
32 condition of probation has completed the prescribed course of
33 drug treatment ~~and, as a result, there is reasonable cause to~~
34 ~~believe that the defendant will not abuse controlled substances in~~
35 ~~the future.~~

36 (d) The term “misdemeanor not related to the use of drugs”
37 means a misdemeanor that does not involve (1) the simple
38 possession or use of drugs or drug paraphernalia, being present
39 where drugs are used, or failure to register as a drug offender, or
40 (2) any activity similar to those listed in paragraph (1).

SEC. 3. Section 1210.1 of the Penal Code is amended to read:

~~1210.1. Possession of Controlled Substances; Probation; Exceptions~~

~~(a)-(a)~~ Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. *No person shall be denied the opportunity to benefit from the provisions of this section based solely on evidence of a co-occurring psychiatric disorder.*

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to either of the following:

(1) Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision ~~(e)(c)~~ of Section 667.5 or Section 1192.7, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in ~~(A)~~ a felony conviction other than a nonviolent drug possession offense, or ~~(B)~~ a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who:

~~(A) While using a firearm, unlawfully, while using a firearm,~~
does either of the following:

1 (A) *Unlawfully* possesses any amount of—(i) a substance
2 containing either cocaine base, cocaine, heroin,
3 methamphetamine, or (ii) a liquid, nonliquid, plant substance, or
4 hand-rolled cigarette, containing phencyclidine.

5 (B) ~~While using a firearm, is~~ *Is* unlawfully under the influence
6 of cocaine base, cocaine, heroin, methamphetamine or
7 phencyclidine.

8 (4) Any defendant who refuses drug treatment as a condition
9 of probation.

10 (5) Any defendant ~~who (A) has~~ *for whom all of the following*
11 *are true:*

12 (A) *Has* two separate convictions for nonviolent drug
13 possession offenses; ~~(B) has~~.

14 (B) *Has* participated in two separate courses of drug treatment
15 pursuant to subdivision (a); ~~and (C) is~~.

16 ©) *Is* found by the court, by clear and convincing evidence, to
17 be unamenable to any and all forms of available drug treatment.

18 ~~Notwithstanding~~

19 *Notwithstanding* any other provision of law, the trial court shall
20 sentence ~~such defendants~~ *a defendant identified in this*
21 *subparagraph* to 30 days in jail.

22 (e©) Within seven days of an order imposing probation under
23 subdivision (a), the probation department shall notify the drug
24 treatment provider designated to provide drug treatment under
25 subdivision (a). Within 30 days of receiving that notice, the
26 treatment provider shall prepare a treatment plan and forward it
27 to the probation department. On a quarterly basis after the
28 defendant begins the drug treatment program, the treatment
29 provider shall prepare and forward a progress report on the
30 individual probationer to the probation department.

31 (1) If at any point during the course of drug treatment the
32 treatment provider notifies the probation department that the
33 defendant is unamenable to the drug treatment being provided,
34 but may be amenable to other drug treatments or related
35 programs, the probation department may move the court to
36 modify the terms of probation to ensure that the defendant
37 receives the alternative drug treatment or program.

38 (2) If at any point during the course of drug treatment the
39 treatment provider notifies the probation department that the
40 defendant is unamenable to the drug treatment provided and all

1 other forms of drug treatment programs pursuant to subdivision
2 (b) of Section 1210, the probation department may move to
3 revoke probation. At the revocation hearing, if it is proved that
4 the defendant is unamenable to all drug treatment programs
5 pursuant to subdivision (b) of Section 1210, the court may revoke
6 probation.

7 (3) Drug treatment services provided by subdivision (a) as a
8 required condition of probation may not exceed 12 months,
9 ~~provided, however, that additional aftercare services as a~~
10 ~~condition of probation may be required for up to six months~~
11 *unless the court finds that the continuation of treatment services*
12 *beyond 12 months is necessary for drug treatment to be*
13 *successful. If a court makes that finding, the court may order up*
14 *to two extensions of probation and the continuation of treatment*
15 *and aftercare for up to an additional six months. The period of*
16 *treatment and aftercare shall not exceed 24 months.*

17 ~~(d) Dismissal of charges upon successful completion of drug~~
18 ~~treatment~~

19 ~~(1) At any time after completion of drug treatment, a~~
20 ~~defendant may petition the sentencing court for dismissal of the~~
21 ~~charges. If (1) (A) Except as provided in subparagraph (B), if~~
22 *the court finds that the defendant successfully completed drug*
23 *treatment, and substantially complied with the conditions of*
24 *probation, the conviction on which the probation was based shall*
25 *be set aside and the court shall dismiss the indictment, complaint,*
26 *or information against the defendant. In addition, except as*
27 *provided in paragraphs (2) and (3), both the arrest and the*
28 *conviction shall be deemed never to have occurred. Except as*
29 *provided in paragraph (2) or (3), the defendant shall thereafter be*
30 *released from all penalties and disabilities resulting from the*
31 *offense of which he or she has been convicted.*

32 *(B) In order to dismiss the indictment of a defendant*
33 *undergoing narcotics replacement treatment, the court shall*
34 *deem that the defendant has successfully completed treatment if*
35 *he or she has been participating in an appropriate program or*
36 *has been treated by a physician for at least three months, and the*
37 *program or physician reports adequate compliance with all*
38 *elements of the defendant's treatment program. Funding for that*
39 *defendant's treatment may continue for up to 18 months even if*
40 *the complaint is dismissed.*

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

~~(e) Violation of probation~~

~~(1)~~ (1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

~~(2) Non-drug-related probation violations~~

~~If~~ If a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) ~~Drug-related probation violations~~

~~(A)~~ (A) If a defendant receives probation under subdivision (a), and violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(B) If a defendant receives probation under subdivision (a), and for the second time violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant ~~(i)~~ has committed a serious violation of rules at the drug treatment program, ~~(ii)~~ has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or ~~(iii)~~ has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

~~(C)~~ (C) If a defendant receives probation under subdivision (a), and for the third time *or subsequent time* violates that probation

1 either by committing a nonviolent drug possession offense, or by
2 violating a drug-related condition of probation, and the state
3 moves for a third time to revoke probation, the court shall
4 conduct a hearing to determine whether probation shall be
5 revoked. If the alleged probation violation is proved, *the court*
6 *may intensify or alter the drug treatment plan, or may find that*
7 *the defendant is*~~not~~ *no longer* eligible for continued probation
8 under subdivision (a).

9 (D) If a defendant on probation at the effective date of this act
10 for a nonviolent drug possession offense violates that probation
11 either by being arrested for a nonviolent drug possession offense,
12 or a misdemeanor for simple possession or use of drugs or drug
13 paraphernalia, being present where drugs are used, or failure to
14 register as a drug offender, or any activity similar to those listed
15 in paragraph (1) of subdivision (d) of Section 1210, or by
16 violating a drug-related condition of probation, and the state
17 moves to revoke probation, the court shall conduct a hearing to
18 determine whether probation shall be revoked. The trial court
19 shall revoke probation if the alleged probation violation is proved
20 and the state proves by a preponderance of the evidence that the
21 defendant poses a danger to the safety of others. If the court does
22 not revoke probation, it may modify probation and impose as an
23 additional condition participation in a drug treatment program.

24 (E) If a defendant on probation at the effective date of this act
25 for a nonviolent drug possession offense violates that probation a
26 second time either by being arrested for a nonviolent drug
27 possession offense, or a misdemeanor for simple possession or
28 use of drugs or drug paraphernalia, being present where drugs are
29 used, or failure to register as a drug offender, or any activity
30 similar to those listed in paragraph (1) of subdivision (d) of
31 Section 1210, or by violating a drug-related condition of
32 probation, and the state moves for a second time to revoke
33 probation, the court shall conduct a hearing to determine whether
34 probation shall be revoked. The trial court shall revoke probation
35 if the alleged probation violation is proved and the state proves
36 by a preponderance of the evidence either that the defendant
37 poses a danger to the safety of others or that the defendant is
38 unamenable to drug treatment. If the court does not revoke
39 probation, it may modify probation and impose as an additional
40 condition participation in a drug treatment program.

1 (F) If a defendant on probation at the effective date of this act
2 for a nonviolent drug offense violates that probation a third *or*
3 *subsequent* time either by being arrested for a nonviolent drug
4 possession offense, or by violating a drug-related condition of
5 probation, and the state moves for a third time to revoke
6 probation, the court shall conduct a hearing to determine whether
7 probation shall be revoked. If the alleged probation violation is
8 proved, *the court may intensify or alter the drug treatment plan,*
9 *or may find that the defendant is*~~not~~ *no longer* eligible for
10 continued probation under subdivision (a).

11 (f) The term “drug-related condition of probation” shall
12 include a probationer’s specific drug treatment regimen,
13 employment, vocational training, educational programs,
14 psychological counseling, and family counseling.

15 SEC. 4. Section 3063.1 of the Penal Code is amended to read:

16 3063.1. ~~Possession of Controlled Substances; Parole;~~
17 ~~Exceptions~~

18 ~~(a)-(a)~~ Notwithstanding any other provision of law, and
19 except as provided in subdivision (d), parole may not be
20 suspended or revoked for commission of a nonviolent drug
21 possession offense or for violating any drug-related condition of
22 parole.

23 As an additional condition of parole for all ~~such of those~~
24 offenses or violations, the ~~Parole Authority~~ *parole authority* shall
25 require participation in and completion of an appropriate drug
26 treatment program. Vocational training, family counseling and
27 literacy training may be imposed as additional parole conditions.

28 The ~~Parole Authority~~ *parole authority* may require any person
29 on parole who commits a nonviolent drug possession offense or
30 violates any drug-related condition of parole, and who is
31 reasonably able to do so, to contribute to the cost of his or her
32 own placement in a drug treatment program.

33 (b) Subdivision (a) does not apply to *any of the following*:

34 (1) Any parolee who has been convicted of one or more
35 serious or violent felonies in violation of subdivision ~~(e©)~~ of
36 Section 667.5 or Section 1192.7.

37 (2) Any parolee who, while on parole, commits one or more
38 nonviolent drug possession offenses and is found to have
39 concurrently committed a misdemeanor not related to the use of
40 drugs or any felony.

1 (3) Any parolee who refuses drug treatment as a condition of
2 parole.

3 (e©) Within seven days of a finding that the parolee has either
4 committed a nonviolent drug possession offense or violated any
5 drug-related condition of parole, the ~~Parole Authority~~ *parole*
6 *authority* shall notify the treatment provider designated to
7 provide drug treatment under subdivision (a). Within 30 days
8 thereafter the treatment provider shall prepare an individualized
9 drug treatment plan and forward it to the ~~Parole Authority~~ *parole*
10 *authority* and to the ~~California Department of Corrections Parole~~
11 ~~Division~~ *parole* agent responsible for supervising the parolee. On
12 a quarterly basis after the parolee begins drug treatment, the
13 treatment provider shall prepare and forward a progress report on
14 the individual parolee to these entities and individuals.

15 (1) If at any point during the course of drug treatment the
16 treatment provider notifies the ~~Parole Authority~~ *parole authority*
17 that the parolee is unamenable to the drug treatment provided,
18 but amenable to other drug treatments or related programs, the
19 ~~Parole Authority~~ *parole authority* may act to modify the terms of
20 parole to ensure that the parolee receives the alternative drug
21 treatment or program.

22 (2) If at any point during the course of drug treatment the
23 treatment provider notifies the ~~Parole Authority~~ *parole authority*
24 that the parolee is unamenable to the drug treatment provided and
25 all other forms of drug treatment provided pursuant to
26 subdivision (b) of Section 1210 and the amenability factors
27 described in subparagraph (B) of paragraph (3) of subdivision (e)
28 of Section 1210.1, the ~~Parole Authority~~ *parole authority* may act
29 to revoke parole. At the revocation hearing, parole may be
30 revoked if it is proved that the parolee is unamenable to all drug
31 treatment.

32 (3) Drug treatment services provided by subdivision (a) as a
33 required condition of parole may not exceed 12 months,
34 ~~provided, however, that additional aftercare services as a~~
35 ~~condition of parole may be required for up to six months unless~~
36 ~~the court finds that the continuation of treatment services beyond~~
37 ~~12 months is necessary for drug treatment to be successful. If a~~
38 ~~court makes that finding, the court may order up to two~~
39 ~~extensions of probation and the continuation of treatment and~~

1 *aftercare for up to an additional six months. The period of*
2 *treatment and aftercare shall not exceed 24 months.*

3 ~~(d) Violation of parole~~

4 ~~(1)-(1)~~ If parole is revoked pursuant to the provisions of this
5 subdivision, the defendant may be incarcerated pursuant to
6 otherwise applicable law without regard to the provisions of this
7 section. Parole shall be revoked if the parole violation is proved
8 and a preponderance of the evidence establishes that the parolee
9 poses a danger to the safety of others.

10 ~~(2) Non-drug-related parole violations~~

11 ~~If~~ If a parolee receives drug treatment under subdivision (a),
12 and during the course of drug treatment violates parole either by
13 committing an offense other than a nonviolent drug possession
14 offense, or by violating a non-drug-related condition of parole,
15 and the ~~Parole Authority~~ *parole authority* acts to revoke parole, a
16 hearing shall be conducted to determine whether parole shall be
17 revoked. Parole may be modified or revoked if the parole
18 violation is proved.

19 ~~(3) Drug-related parole violations~~

20 ~~(A)-(A)~~ If a parolee receives drug treatment under subdivision
21 (a), and during the course of drug treatment violates parole either
22 by committing a nonviolent drug possession offense, or a
23 misdemeanor for simple possession or use of drugs or drug
24 paraphernalia, being present where drugs are used, or failure to
25 register as a drug offender, or any activity similar to those listed
26 in paragraph (1) of subdivision (d) of Section 1210, or by
27 violating a drug-related condition of parole, and the ~~Parole~~
28 ~~Authority~~ *parole authority* acts to revoke parole, a hearing shall
29 be conducted to determine whether parole shall be revoked.
30 Parole shall be revoked if the parole violation is proved and a
31 preponderance of the evidence establishes that the parolee poses
32 a danger to the safety of others. If parole is not revoked, the
33 conditions of parole may be intensified to achieve the goals of
34 drug treatment.

35 (B) If a parolee receives drug treatment under subdivision (a),
36 and during the course of drug treatment for the second time
37 violates that parole either by committing a nonviolent drug
38 possession offense, or by violating a drug-related condition of
39 parole, and the ~~Parole Authority~~ *parole authority* acts for a
40 second time to revoke parole, a hearing shall be conducted to

1 determine whether parole shall be revoked. If the alleged parole
2 violation is proved, the parolee ~~is not eligible for continued~~
3 ~~parole under any provision of this section and~~ may be
4 reincarcerated *or the conditions of parole may be intensified to*
5 *achieve the goals of drug treatment.*

6 (C) If a parolee already on parole at the effective date of this
7 act violates that parole either by committing a nonviolent drug
8 possession offense, or a misdemeanor for simple possession or
9 use of drugs or drug paraphernalia, being present where drugs are
10 used, or failure to register as a drug offender, or any activity
11 similar to those listed in paragraph (1) of subdivision (d) of
12 Section 1210, or by violating a drug-related condition of parole,
13 and the ~~Parole Authority~~ *parole authority* acts to revoke parole, a
14 hearing shall be conducted to determine whether parole shall be
15 revoked. Parole shall be revoked if the parole violation is proved
16 and a preponderance of the evidence establishes that the parolee
17 poses a danger to the safety of others. If parole is not revoked,
18 the conditions of parole may be modified to include participation
19 in a drug treatment program as provided in subdivision (a). This
20 paragraph does not apply to any parolee who at the effective date
21 of this act has been convicted of one or more serious or violent
22 felonies in violation of subdivision (e) of Section 667.5 or
23 Section 1192.7.

24 (D) If a parolee already on parole at the effective date of this
25 act violates that parole for the second time either by committing
26 a nonviolent drug possession offense, or by violating a
27 drug-related condition of parole, and the ~~Parole Authority~~ *parole*
28 *authority* acts for a second time to revoke parole, a hearing shall
29 be conducted to determine whether parole shall be revoked. If the
30 alleged parole violation is proved, the parolee ~~is not eligible for~~
31 ~~continued parole under any provision of this section and~~ may be
32 reincarcerated *or the conditions of parole may be intensified to*
33 *achieve the goals of drug treatment.*

34 (e) The term “drug-related condition of parole” shall include a
35 parolee’s specific drug treatment regimen, and, if ordered by the
36 parole authority pursuant to this section, employment, vocational
37 training, educational programs, psychological counseling, and
38 family counseling.

39 SEC. 5 No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the
4 penalty for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition of a
6 crime within the meaning of Section 6 of Article XIII B of the
7 California Constitution.

O